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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,197	11/09/2001	Matthew R. Williams	IPP0034.CON	8029

7590

05/08/2002

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/08/2002

*Renewed 6/14/2*  
*pru*

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/037,197

Applicant(s)

WILLIAMS, MATTHEW R.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 9-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 9-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
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*fmp*

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claim 18 is objected to because of the following informalities: "wired" should be changed to ---wire---. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. **Claims 1,2,9-14,16,19,20,24,25** are rejected under 35 U.S.C. 102(e) as being anticipated by Curen et al. (US 5,911,198 on form PTO-1449).

For claims 1,9,10,12, Curen et al. disclose a collar 14 for controlling the behavior of an animal comprising a pressure pulse generator/means 12, 24 carried by the collar, the generator including a probe 18 to contact and generate a mechanical pressure pulse against the skin of the animal (see col. 3, lines 2-4); a controller 40 coupled with the pressure generator for controlling selective application of the mechanical pressure pulse.

For claim 2, Curen et al. disclose the probe 18 including a tip which selectively and intermittently extends from the probe.

For claim 11, Curen et al. disclose in col. 4, lines 23-36, that the generating means 12, 24 working together with the controller 40 to create a pulse that is adjustable in intensity.

For claim 13, Curen et al. disclose a controller 24 to control an amplitude of the pressure pulse (col. 4, lines 28-35).

For claims 14,16, Curen et al. disclose a receiver and a transmitter operatively associated with the controller (claim 9).

For claim 19, Curen et al. disclose a collar 14 for controlling the behavior of an animal comprising the steps of applying a mechanical pressure pulse wave generating collar (col. 3, lines 1-6) to an animal; monitoring the animal (inherent in the invention of Curen et al.); identifying undesirable behavior from monitoring the animal (again, inherent in Curen et al.'s invention); directing a mechanical pressure pulse wave to the skin of the animal when undesirable behavior is detected (see col. 3, lines 2-4).

For claim 20, Curen et al. further disclose in the monitoring step, visually observing the animal (inherent in Curen et al.'s invention).

For claim 24, Curen et al. further disclose in the step of directing a pressure pulse further comprises transmitting a pressure pulse signal from a remote source to the collar (claim 9 and col. 2, line 38 where Curen et al. discuss a remote control training system).

For claim 25, Curen et al. further disclose selecting an intensity of the pressure pulse wave intensity directed to the skin of the animal (see col. 3, lines 2-3 and col. 4, lines 23-36).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 15,17,21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curen et al. (US 5,911,198) in view of Christiansen (US 5,815,077).

For claim 15, Curen et al. are silent about their receiver being a radio frequency receiver. Christiansen discloses a collar 12 for controlling the behavior of an animal comprising a pressure pulse generator carried by the collar, the generator including a probe/pressure pulse means 34 to contact and generate a pressure pulse against the skin of the animal, the probe includes a tip which selectively and intermittently extends from the probe and is adjustable to vary an intensity of the pressure pulse. In addition, Christiansen further discloses a receiver 36 operatively associated with the controller, wherein the receiver is a radio frequency receiver (col. 2, lines 49-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a radio frequency receiver as taught by Christiansen in place of the receiver of Curen et al. because the radio frequency receiver is notoriously well known in the remote control industry and thus, it is plentiful and cheap to obtain.

For claim 17, Curen et al. are silent about a hand held remote. Christiansen further teaches a hand held remote 14 to allow a user to control the electronic collar from any location within the vicinity of the collar. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a hand held remote as taught by Christiansen to control the collar of Curen et al. in order to allow a

user to control the collar, and thus the animal, from any location within the vicinity of the collar.

For claims 21-23, Curen et al. are silent about in the step of monitoring, utilizing a sensor. Christiansen discloses an animal control device comprising the step of monitoring the animal by visually observing the animal and utilizing a sensor 30 in which the sensor monitors barking and animal location. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ in the step of monitoring of Curen et al., a sensor as taught by Christiansen in order to monitor barking and the location of the animal.

6. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Curen et al. (US 5,911,198) in view of Westrick et al. (US 5,559,498). Curen et al. are silent about the transmitter comprises a buried wired. Westrick et al. disclose a collar 26 for controlling the behavior of an animal comprising a pressure pulse means 38 carried by the collar; a controller 28 operatively associated with the pulse means; a receiver (col. 4, line 46) operatively operatively associated with the controller; a transmitter 24 operatively associated with the controller, wherein the transmitter comprises a buried wired 18. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a transmitter that is a buried wire as taught by Westrick et al. in the device of Curen et al. in order to prevent the animal from damaging the wire by burying the wire beneath the ground.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. **Claims 1-2,9-25** are rejected under the judicially created doctrine of double patenting over claims 1,7-13 of U. S. Patent No. 6,360,697 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a pressure pulse generator including a probe and a controller to control the pulse. In addition, the method of applying a pressure pulse wave generating collar to an animal, monitoring the animal, identifying the behavior from monitoring the animal and directing a pressure pulse wave to the skin of the animal when undesired behavior is detected.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Drawings***

9. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "22" has been used to designate strap, valve and solenoid. Reference character "24" has been used to designate both buckle and inlet tube. Reference character "18" has been used to designate both probe and tip. Reference character "70" has been used to designate both pressure wave generator and guide tube. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Priority***

10. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:


An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 8:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. The fax number of the Art Unit is (703)-306-4195. Any inquiry of a general nature or relating to the

Art Unit: 3643

status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

Son T. Nguyen, *STN*  
Patent Examiner, GAU 3643  
April 24, 2002



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SUPERVISORY PATENT EXAMINER  
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